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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MATTHEW M. BOVEE et al., as Trustees, etc., Plaintiffs, Cross-defendants and Respondents, v. ALEX KODNEGAH, Defendant, Cross-complainant and Appellant.	G041450 (Super. Ct. No. 06CC04225) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Kirk H. Nakamura, Judge. Request for judicial notice. Order affirmed. Request for judicial notice denied.

The Law Office of Thomas P. Giordano and Jon Moss for Defendant, Cross-complainant and Appellant.

Klein & Wilson and Mark B. Wilson for Plaintiffs, Cross-defendants and Respondents.

Defendant and cross-complainant Alex Kodnegah appeals from the trial court's order granting the motion to strike his cross-complaint. Plaintiffs and cross-defendants Matthew M. Bovee and Linda T. Bovee, Trustees of the Bovee Family Trust Dated March 28, 1997, contend that the motion was properly granted under Code of Civil Procedure section 425.16 (the anti-SLAPP statute; all further statutory references are to the Code of Civil Procedure). We agree with plaintiffs and affirm the order.

Defendant requests we take judicial notice of certain documents filed in connection with earlier litigation between the parties. These documents were not before the trial court in this action and we therefore deny the request.

FACTS AND PROCEDURAL BACKGROUND

The cross-complaint at issue had its genesis in an unlawful detainer action and conduct preceding the filing of that action. Defendant was the tenant and plaintiffs the landlords of property in Riverside County operated by defendant as an automobile repair facility. A dispute arose between them, primarily concerning the condition of asphalt paving, each party contending that it was the responsibility of the other to repair its damaged condition. Other issues involved the asserted obligation of defendant to furnish plaintiffs with copies of insurance policies and the keeping of abandoned vehicles on the premises. Plaintiffs filed an unlawful detainer action in the Riverside County Superior Court. After a bench trial, the court found that defendant had breached the lease, ordered a forfeiture of the lease, and awarded plaintiffs their costs and attorney fees. The parties thereafter stipulated that possession of the property be returned to plaintiffs.

In the current action by plaintiffs against defendant in the Orange County Superior Court, defendant filed a cross-complaint asserting two purported causes of action, respectively denominated breach of contract and interference with prospective

economic advantage. The trial court held that both causes of action were barred by the anti-SLAPP statute, section 425.16. Defendant makes no argument that the order was inappropriate as to the breach of contract cause of action. Therefore, the only issue before us is whether the second cause of action, for interference with prospective economic advantage, was properly stricken under the statute.

DISCUSSION

Section 425.16, subdivision (b)(1) provides that unless it is "established . . . there is a probability . . . the plaintiff will prevail on the claim," a motion to strike must be granted in an action "arising from any act . . . in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue . . . ." This "includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law . . . ." (§ 425.16, subd., (e).)

The second cause consists of a mish-mash of contentions. The specific allegations supporting the interference with prospective economic advantage may be summarized as follows: (1) plaintiffs' statements to employees Carrasco and Mejia that they should find other employment because the lease would be terminated; (2) plaintiffs' delivery to Carrasco and Mejia of letters addressed to defendant demanding that the asphalt be repaired or that he quit the premises, causing the employees to believe defendant would be evicted [note: in responses to requests for admission, defendant admitted Carrasco and Mejia were never his employees]; (3) plaintiffs' statement to Bensaid, a prospective purchaser of defendant's business, that the lease would be

terminated [note: Bensaid testified in his deposition he decided not to buy the business based on his own analysis of the lease]; (4) plaintiffs' notices regarding defaults under the lease; (5) plaintiffs' demand that defendant reconstruct the asphalt pavement; (6) plaintiffs' filing of the unlawful detainer action; (7) plaintiffs' claim to Mejia that defendant was dishonest; (8) plaintiffs' statement to Mejia that defendant would be evicted for non-payment of rent; and (9) plaintiffs' faxing copies of the lease to Mejia threatening to evict defendant unless she made repairs that were not defendant's responsibility.

The '"principal thrust or gravamen' test . . . determine[s] whether an action fits within the scope of the anti-SLAPP protection provided by section 425.16 when a pleading contains allegations referring to both protected and unprotected activity. [Citation.]" (*Club Members For An Honest Election v. Sierra Club* (2008) 45 Cal.4th 309, 319.) It is clear that the gravamen of the second cause of action relates to plaintiffs' prior successful action for unlawful detainer and the notices served in connection with that action. Both plaintiffs' declaration in support of the motion and defendant's declaration in opposition to the motion support this interpretation. In fact, in his declaration, defendant disputes the same facts that were rejected by the court in the preceding unlawful detainer action. Where an action arises out of earlier litigation, it arises from conduct protected under section 425.16.

Thus the cross-complaint is subject to section 425.16 and the burden shifted to defendant to demonstrate by admissible evidence "that there is a probability that [he] will prevail on the claim." (§ 425.16, subd. (b)(1).) Defendant failed to do so. Certain facts were shown to be untrue as disclosed by discovery. Further, as noted, most of the facts alleged in the cross-complaint and asserted in defendant's declaration were adjudicated against him in the unlawful detainer action. "If a judgment, no matter how erroneous, is within the jurisdiction of the court, it can only be reviewed and corrected by one of the established methods of direct attack. [Citations.]" (8 Witkin, *Cal. Procedure*

(5th ed. 2008) Attack on Judgment in Trial Court, § 1, p. 583; accord *Estate of Buck* (1994) 29 Cal.App.4th 1846, 1854; *People v. $6,500 U.S. Currency* (1989) 215 Cal.App.3d 1542, 1548.) The kind of collateral attack attempted here is not permitted.

DISPOSITION

The order is affirmed. The request for judicial notice is denied. Respondents shall recover their costs on appeal and attorney fees in an amount to be determined by the trial court.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

MOORE, J.

ARONSON, J.